

REMARKS

Summary Of The Office Action & Formalities

Claims 1-10 are all the claims pending in the application. By this Amendment, Applicant is amending claim 8 and canceling claim 9. No new matter is added.

Applicant also thanks the Examiner for initialing the references listed on form PTO/SB/08 submitted with the Amendment filed on May 17, 2004.

The prior art rejections are summarized as follows:

1. Claims 1-8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Brakarz et al. (USP 5,323,933) in view of Schneider (USP 4,949,876), as evidenced by Siegel et al. (USP 6,223,951).

The present Office Action does NOT address claims 9 and 10, which were added by the Applicant in the Amendment dated May 17, 2004. Accordingly, unless the Examiner allows claim 10 (claim 9 being canceled by this Amendment), the Examiner is requested to issued a new office action setting forth the basis for not allowing these claims and restarting the date from which the Applicant must file a response within a shortened statutory period of three months.

Applicant respectfully traverses.

Claim Rejections - 35 U.S.C. § 103

1. Claims 1-8 Over Brakarz et al. (USP 5,323,933) In View Of Schneider (USP 4,949,876), As Evidenced By Siegel et al. (USP 6,223,951).

In rejecting claims 1-8 over Brakarz et al. (USP 5,323,933) in view of Schneider (USP 4,949,876), as evidenced by Siegel et al. (USP 6,223,951), the grounds of rejection state:

Brakarz et al. discloses all of the features of the spray pump, including a pump (cylindrical-shaped body 3 and piston 7) and a dispensing head (pressing button 9) with a spray nozzle insert and a spray profile (atomizer insert 10), as discussed in column 3, lines 41-52 and shown in Figure 1. The pump (cylindrical-shaped body 3 and piston 7) has an initial dead stroke, actuating the pump starting only after the dispensing head has traveled over the dead stroke, as discussed in column 3, lines 14-40.

Brakarz et al. does not disclose a closure system including a closure element. Siegel et al. disclose a spray device with similar spray components to Brakarz et al. Siegel et al. disclose a sidewall portion (47) that scrapes a discharge orifice (42) to clean it off between uses. Siegel et al. evidences a need for pump sprayers to have a feature for scraping off the spray orifice.

In the embodiment of Figures 2-4, 6, and 7, Schneider discloses a pasty fluid dispenser device comprising a fluid reservoir (storage chamber) with a pump (compression chamber 38) mounted to it. A dispensing head (pushbutton member 1) is mounted to the pump (compression chamber 29) to move between a rest position and a dispensing position, and it has a dispensing orifice (116). The device comprises a closure system (tubular guide portion 110) fixed to the reservoir (storage chamber) and it comprises a closure element (masking element 113) suitable for closing off the dispensing orifice (116) from the outside when the dispensing head (pushbutton member 1) is in the rest position. The closure system (tubular guide portion 110) is implemented in the form of a hollow sleeve disposed around the dispensing head. The hollow sleeve has, on one side, the closure element (masking element 113) disposed above the opening, and on another side, a cutout through which the dispensing head (pushbutton member 1)

projects so that it can be actuated by the user, as discussed in column 6, lines 44-65. While the dispensing head (pushbutton member 1) is returning from its dispensing position to its rest position after the dispensing member has been actuated, the closure element (masking element 113) slides snugly over the zone situated around the dispensing orifice (116), so as to remove any trace of fluid at the dispensing orifice (116), as discussed in column 5, lines 23-32. The closure system (tubular guide portion 110) is snap-fastened to the neck of the reservoir, as shown in Figures 6 and 7.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the spray pump of Brakarz et al. with a closure system including a closure element, as taught by Schneider, in order to scrape off the dispensing orifice between uses, which a desirable function of spray devices, as evidenced by Siegel et al.

Office Action at pages 2-4. Applicant respectfully disagrees.

As a preliminary matter, Applicant notes that Siegel et al. (USP 6,223,951) apparently has a prior art date under 35 U.S.C. § 102(e) of August 17, 1999, which is after Applicant's earliest priority date of July 28, 1999 based on Applicant's priority document French Application FR 99.09798. Applicant, therefore, requests the Examiner to remove Siegel et al. from consideration upon the Applicant perfecting its claim to foreign priority by filing a certified translation or upon the Applicant filing a declaration of prior invention in a WTO member country under 37 C.F.R. § 1.131.

Notwithstanding the above, Applicant submits that the present invention would not have been obvious to one skilled in the art, even in view of Siegel et al.

The present rejection refers to column 3, lines 14-40 of Brakarz et al. for allegedly disclosing an initial dead stroke for actuating the pump. Applicant respectfully submits that the grounds of rejection mistakenly characterize the disclosure of Brakarz et al.

The passage from Brakarz cited in the grounds of rejections refers to the priming of the pump, which is intended to expel the air entrapped in the pump chamber *before the first complete filling of this pump chamber by fluid product*. Indeed, a priming step is common to all the pumps and absolutely does not correspond to the recited actuation feature of the present invention.

In particular, operation of pumps during the priming process is very different from normal operation, because air is compressible, whereas liquid or paste is incompressible. Therefore, every pump has an initial dead stroke during the priming process, due to compressibility of air. Applicant's invention provides an initial dead stroke *when operating in the dispensing mode* with fluid or paste in the chamber (i.e., actuation of the dispensing member). This liquid or paste product will be dispensed only after the dispensing head has traveled over the dead stroke. On the other hand, when the pump chamber in Brakarz et al. is completely full with liquid (after *priming*), the liquid will be ejected as soon as a force is applied on dispensing head sufficient to move the valve.

Accordingly, Applicant's invention refers to a length to be traveled by the dispensing head so as to dispense fluid product contained in the pump chamber whereas Brakarz et al. refers to an intensity of compression applied on dispensing head. Therefore, the operation of the pump in Brakarz et al. is completely different from the present invention and Brakarz et al. clearly does not teach or even suggest a dead stroke so as to dispense fluid product contained in the pump chamber as recited in claim 1.

In view of the foregoing differences, the Examiner is kindly requested to reconsider and withdraw the rejection of claim 1 and dependent claims 2-7.

Regarding claim 8, Applicant has amended this claim to include the language of claim 9. Therefore, claim 8 is allowable for reasons similar to those discussed above.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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